



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Mr. Wesley M. Criddle
Chief Deputy/Records Clerk
Wood County Sheriff's Department
P.O. Box 307
Quitman, Texas 75783

OR2012-00458

Dear Mr. Criddle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 475714.

The Wood County Sheriff's Department (the "sheriff's department") received a request for (1) all reports, communications, or correspondence made during a specified time period that concern any of three named individuals; (2) a specified 9-1-1 call recording; (3) the "on person" microphone and in-car audio and video recordings of a named deputy for a specified date for events concerning any of three named individuals; and (4) the "on person" microphone and in-car audio and video recordings of another named deputy during a specified time period pertaining to events concerning two named individuals. You state you do not possess some of the requested information.¹ You state you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹We note the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

²Although you also raise section 552.022 of the Government Code, we note section 552.022 does not provide an exception to disclosure. Rather, it sets out the categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See Gov't Code* § 552.022.

Initially, we address your assertion that portions of the information at issue were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-15499 (2012). In that ruling, this office concluded the sheriff's department must release any 9-1-1 call recordings responsive to the request, but may withhold the deputy's "on person" microphone audio recordings under section 552.108(a)(1) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, to the extent any of the requested information is identical to the information previously requested and ruled upon by this office, the sheriff's department must continue to rely on Open Records Letter No. 2012-15499 as a previous determination and withhold or release any previously ruled upon information in accordance with the prior ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, while you indicate portions of the information submitted to this office in response to the instant request consist of the same information previously ruled upon, the previous request sought only the 9-1-1 call recordings for a specified time period and "on person" microphone and in-car audio and video for a named deputy during a specified time period. Accordingly, this office has not ruled on the additional information you have submitted in response to this request. We therefore conclude the city may not withhold any of the additional submitted information on the basis of Open Records Letter No. 2012-15499. *See* ORD 673 at 6-7.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all reports pertaining to the named individuals. This portion of the request requires the sheriff's department to compile the named individuals' respective criminal histories. Therefore, to the extent the sheriff's department maintains unspecified law enforcement records listing any of the named individuals as suspects, arrestees, or criminal defendants, the sheriff's department must withhold such information

under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate the individuals' right to privacy. Accordingly, we will address your arguments for this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age at the time the conduct occurred. *See id.* § 51.02(2). However, section 58.007(c) does not apply to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You assert reports 12-00061, 12-00061A, 12-00061B, and 1200063 are subject to section 58.007. However, these reports do not identify a juvenile as a suspect or offender for purposes of section 58.007. Accordingly, the submitted reports are not confidential under section 58.007(c) and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). We note a portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); Penal Code § 22.041(b)-(c) (“child” for purposes of offense of abandoning or endangering a child means child younger than 15 years). As you do not indicate the sheriff’s department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff’s department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Common-law privacy under section 552.101 also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The sheriff’s department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you have marked on that basis is not private and may not be withheld under section 552.101.

You assert reports 12-00061, 12-00061A, and 12-00061B are excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

³As we are able to make this determination, we need not address your other arguments for this information.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of this exception to the information at issue. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the reports at issue “involve [f]amily [v]iolence and may require exception under section 552.108” due to a lengthy family feud and the “fear that future propensity for future family violence could possibly still exist.”

A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). You have not explained how the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert the information at issue was prepared by an attorney representing the state or reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Thus, you have failed to demonstrate the applicability of section 552.108(a)(4) or section 552.108(b)(3). Therefore, the sheriff's department may not withhold reports 12-00061, 12-00061A, and 12-00061B under section 552.108.

Section 552.130 of the Government Code excepts from disclosure information that relates to (1) a motor vehicle operator's or driver's license, (2) a motor vehicle title or registration or (3) a personal identification document issued by an agency of this state or another state or country.⁴ *Id.* § 552.130(a). Therefore, the sheriff's department must withhold the information we have marked under section 552.130. However, the remaining information you have marked is not protected by section 552.130 and may not be withheld on that basis.

In summary, to the extent any of the requested information is identical to the information previously requested and ruled upon by this office, the sheriff's department must continue to rely on Open Records Letter No. 2012-15499 as a previous determination and withhold or release any previously ruled upon information in accordance with the prior ruling. To the extent the sheriff's department maintains unspecified law enforcement records listing any of the named individuals as suspects, arrestees, or criminal defendants, the sheriff's department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's department must also withhold the information we have marked in the remaining information under

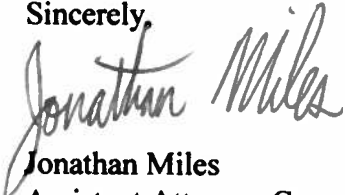
⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 in conjunction with common-law privacy and the motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 475714

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information to be released includes the requestor's driver's license number and his Texas vehicle's license plate number to which he has a right of access under section 552.023 of the Government Code. See Gov't Code §§ 552.023(b) (person or person's authorized representative has special right of access to records that contain information relating to person that are protected from public disclosure by laws intended to protect person's privacy interests). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. See *id.* § 552.130(c). Additionally, Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including Texas license plate numbers under section 552.130(a)(2) of the Government Code. Thus, if the sheriff's department receives another request for this same information from a person who would not have a right of access, section 552.130(c) and Open Records Decision No. 684 authorize the sheriff's department to redact the requestor's driver's license number as well as his Texas license plate number, respectively.